

No. 9/1/87-6-Lab./4843.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Hakam Metal Industries, Tejli Gate, Jagadhri

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Ref. No. 219 of 1983.
(New No. 424 of 1984)

between

SHRI BABU RAM C/O SH. HARI CHAND, GENERAL SECRETARY, METAL LABOUR UNION, JAGADHRI AND THE MANAGEMENT OF MESSRS HAKAM METAL INDUSTRIES, TEJLI GATE, JAGADHRI.

Present :

Shri Rajeshwar Nath, for the workman.
None for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (c) of sub-section (i) of Section 10 of Industrial Disputes Act, 1947 referred the dispute between Shri Babu Ram and Messrs Hakam Metal Industries, Tejli Gate, Jagadhri originally to Labour Court, Faridabad. The terms of the reference are as under:—

“Whether termination of services of Shri Babu Ram was justified and in order, if not, to what relief is he entitled?”

On creation of Labour Court at Ambala in April, 1984 this reference was received by transfer.

Workman alleged that he had been working in the respondent-management as a Laithman since 1973. His services were terminated by the respondent-management on 14th March, 1983 without issuing any notice and without making payment of any retrenchment compensation. He prayed that this termination is violative to provision of section 25 (F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that the present reference is bad in law because at the time of issuing demand notice and making reference of this dispute management industry has been closed. The reference was incompetent and not maintainable. It was further contended that workman never worked for 240 days in any of the calendar year. Workman has been gainfully employed, so he is not entitled to back wages, etc. On merits it was contended by the respondent-management that workman joined service of respondent in the year 1976-77. During that year he worked for 72 days, in 1977-78, he worked for 128 days, in 1978-79, he worked for 118 days in 1979-80, he worked for 101 days in 1980-81, he worked for 73 days and in 1981-82 he worked for 133 days. It was further contended that applicant left respondent's establishment in October, 1982 by absenting himself from duty. Thereafter the respondent closed its factory in March, 1983 due to lack of work. A sum of Rs. 800 was taken by the workman as an advance and that amount is still outstanding towards the workman.

Workman filed replication denied the contention of the respondent-management.

On the pleadings of the parties the following issues were framed for the just decision of this dispute :—

Issues :

1. Whether termination order, dated 14th March, 1983 is just if not, its effect ? OPM
2. Relief.

Before switching on my issue-wise discussion it would be beneficial to mention here that the reference was fixed for arguments for 2nd May, 1987. Shri Rajeshwar Nath appeared for workman while respondent-management absented, so *ex parte* arguments were heard. In this case both the parties have lead their evidence so I prefer to deliver my award regarding controversy between the parties on the basis of evidence on the file on merits and not *ex parte*.

Issue No. 1 :

In support of this issue Shri Roshan Lal, Proprietor of respondent-management examined himself. He deposed that he never retrenched workman Shri Babu Ram. He in fact himself absented his duty. He further deposed that he has given in writing to Babu Ram for the days he worked in the establishment of the management.

Shri Babu Ram examined himself as AW-1. he stated that he joined service of the respondent in 1973 as a Laithman. He was terminated on 14th March, 1983 without any notice and without making payment of wages, in lieu of notice period and without making payment of retrenchment compensation. Workman also examined AW-2 Shri Yash Lal who deposed that parties are known to him. Workman Babu Ram used to do work in the respondent-management at Laith Machine. Management has closed its factory three months earlier near about 20 or 22 persons used to work in the respondent-management establishment. He himself also used to work with respondent on daily wages.

In view of the above evidence I am of the considered view that the case of the management is that workman left job of respondent-management of his own, his services were never terminated. While the case of the workman is that he was terminated on 14th March, 1983.

Examination-in-chief of AW-2 Shri Yash Paul is very significant. He was examined on 25th April, 1986. He deposed that three years earlier respondent-management has closed its establishment. So, the date of winding up of respondent-management establishment roughly comes to 25th March, 1983 while case of Shri Babu Ram is that he was terminated on 14th March, 1983. Respondent has also established its case that workman Babu Ram never worked for 240 days in any calendar year. This fact is clear from the defence taken by the management as re-produced above. When Shri Roshan Lal came in the witness box he categorically stated that he used to give in writing the attendance of Shri Babu Ram. This fact has not been denied by Shri Babu Ram while in the witness box. Moreover if Shri Babu Ram would have worked for 240 days or more than that in any calendar year, in those circumstances he should have produced his attendance which were marked by Shri Roshan Lal and are in possession of workman according to the management. Withholding of such material evidence goes against Shri Babu Ram, workman himself and inference has to be drawn that Shri Babu Ram workman did not work for 240 days in any calendar year as narrated above. When it is proved on the file that Shri Babu Ram has failed to establish that he had worked 240 days or more than 240 days in any calendar year since the day of his joining service of respondent-management in those circumstances there is no violation of provisions of section 25 (F) of Industrial Disputes Act, 1947. So the defence taken by management that workman left his job of his own can be safely relied upon.

If it is to be taken for the sake of arguments that workman did not leave job of respondent-management in those circumstances he had not completed his service either of 240 days or more than 240 days, so even if he was retrenched on 14th March, 1983 in those circumstances there was no necessity for the management to issue notice or to have paid wages, in lieu of, notice period and retrenchment compensation. On the other hand as per admission by the witness of the workman management closed its factory on 25th March, 1983, so in those circumstances also question of reinstatement of workman does not arise, over over since he had not completed service either of 240 days or more than that, so one month wages, in lieu of, notice period and retrenchment compensation also cannot be paid to him. So this issue is accordingly decided, in favour of management and against the workman.

Issue No. 2 :

For the foregoing reasons on the basis of my findings on issue No. 1, I hold that workman is not entitled to reinstatement nor wages, in lieu of notice period nor retrenchment compensation, so I pass award regarding the dispute between the parties accordingly.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.

Dated : the 5th May, 1987.

Endst. No. 994, dated the 6th May, 1987

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Depts., Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.